

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Revision of the Commission's Rules to)	
Ensure Compatibility with Enhanced 911)	
Emergency Calling Systems)	CC Docket No. 94-102
)	
NOW Licenses, LLC Petition for a)	
Temporary and Limited Waiver of the E911)	
Phase II Location Technology)	
Implementation Rules)	

**PETITION FOR A TEMPORARY AND LIMITED WAIVER OF THE E911
PHASE II LOCATION TECHNOLOGY IMPLEMENTATION RULES**

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SUMMARY

NOW Licenses, LLC (“NOW Licenses”) hereby requests a temporary and limited waiver of the Commission’s E911 Phase II Rules to implement the same two-stage E911 hybrid location solution consisting of a Network Software Solution (“NSS”) and Enhanced Observed Time Difference of Arrival (“E-OTD”) that the Commission previously approved for Voicestream Wireless (“Voicestream”). However, NOW Licenses seeks a slightly different time schedule to deploy E-OTD-capable handsets and the required network infrastructure upgrades necessary to provide NSS/E-OTD automatic location information (“ALI”) services than that previously approved for Voicestream because of the current unavailability of E-OTD-capable handsets and the current unavailability of network software and hardware necessary to implement NSS/E-OTD.

NOW Licenses seeks a waiver to delay the sale and activation of E-OTD-capable handsets to reflect the current unavailability of handsets. Although NOW Licenses has not yet received a Phase II PSAP request pursuant to Section 20.18(j) of the Commission’s Rules, NOW Licenses, out of an abundance of caution, also seeks a waiver, to the extent one is necessary, to delay deployment of network components required to implement NSS/E-OTD in line with NOW Licenses’ vendor’s expected delivery timeframes. NOW Licenses also seeks a waiver, to the extent necessary, similar to the one previously granted Voicestream of the accuracy requirements of Section 20.18(h) of the Commission’s Rules, but in line with expected deployment of location capabilities in the handsets and network.

The requested waiver sought by NOW Licenses satisfies the applicable Commission waiver standard as recently articulated in the *Fourth Memorandum Opinion and Order*. Moreover, NOW Licenses has taken concrete steps to comply with the Commission's Phase II E911 rules. Finally, NOW Licenses' limited waiver request also provides a revised schedule that will ensure compliance as soon as the equipment and handsets are available. A grant of the requested waiver will also serve the public interest, convenience and necessity because NOW Licenses' use of NSS/E-OTD location technology will produce the same benefits as those cited by the Commission as the basis for Voicestream's waiver. Finally, there have been no qualifying Phase II requests from PSAPs in NOW Licenses' licensed areas so the delay in implementation proposed by NOW Licenses will not have any impact on existing emergency services or existing Phase II PSAP requests.

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PETITION FOR A TEMPORARY AND LIMITED WAIVER OF THE E911 PHASE II LOCATION TECHNOLOGY IMPLEMENTATION RULES

NOW Licenses, LLC ("NOW Licenses"), by its attorney and pursuant to Sections 1.3 and 1.925 of the Commission's rules,¹ hereby requests a temporary and limited waiver to the extent necessary of the Phase II enhanced 911 ("E911") obligations set forth in Sections 20.18(e), (g), and (h) of the Commission's Rules. Specifically, NOW Licenses seeks a temporary and limited waiver to implement the same two-stage hybrid location solution consisting of a Network Software Solution ("NSS") and Enhanced Observed Time Difference of Arrival ("E-OTD") that the Commission previously approved for Voicestream Wireless ("Voicestream").² However, due to the current

¹ 47 C.F.R. §§ 1.3, 1.925

² See *Fourth Memorandum Opinion and Order*, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket 94-102, FCC 00-326 (*rel.* September 8, 2000)(*"Fourth MO&O"*).

unavailability of both the E-OTD-capable handsets and the required network software and hardware components to deploy NSS/O-ETD, NOW Licenses seeks a slightly different time schedule to deploy E-OTD-capable handsets and, to the extent necessary, the required network infrastructure upgrades necessary to provide NSS/E-OTD ALI services than that previously approved for Voicestream. For the reasons set forth in greater detail below, the requested temporary and limited waiver satisfies the applicable Commission waiver standard and a grant would serve the public interest.

I. BACKGROUND

NOW Licenses is currently licensed to operate a commercial wireless network pursuant to broadband Personal Communications Services (“PCS”) licenses covering 6 Basic Trading Areas (“BTAs”) in Michigan.³ NOW Licenses is a wholly owned subsidiary of NPI-Omnipoint Wireless, LLC which in turn is 20% indirectly owned by Voicestream. To date, NOW Licenses has constructed its broadband PCS networks in all of its markets in accordance with the Global System for Mobile Communications (“GSM”) standard and is currently offering service to the public in each of these areas. As NOW Licenses has previously reported in its E911 Report, NOW Licenses utilizes Nortel Networks’ (“Nortel”) network infrastructure equipment as do many other GSM

³ Exhibit A to this Petition lists the licenses held by NPI-Omnipoint and the associated BTAs. This limited waiver request also extends to all licenses subsequently acquired by NOW Licenses.

network operators, including Voicestream.⁴ As NOW Licenses has also reported in its Amended E911 Report, NOW Licenses plans to deploy the same hybrid NSS/E-OTD solution as other GSM licensees, including Voicestream.⁵

In the instant Petition, NOW Licenses seeks a temporary and limited waiver of the impending October 1, 2001 date for NOW Licenses to begin deploying location-capable handsets. Since NOW Licenses has opted to deploy the hybrid NSS/E-OTD solution, NOW Licensees has an obligation to begin offering E-OTD capable handsets by the October 1, 2001 deadline. NOW Licenses' handset manufacturers, however, have told NOW Licenses that they will not be able to deliver to NOW Licenses location-capable handsets by October 1, 2001. Accordingly, a limited waiver of the October 1, 2001 date is appropriate.

NOW Licenses out of an abundance of caution also seeks a limited waiver of the six month deployment schedule for the software and network components associated with delivering NSS/E-OTD. NOW Licenses understands that its network infrastructure manufacturer, Nortel, has indicated that the necessary software and hardware components to deploy NSS/E-OTD will not be available until the second quarter of 2002. As of the date of this Waiver Request, however, NOW Licenses has not received a Phase II E911

⁴ See NPI-Omnipoint Wireless LLC Report, dated January 11, 2001. Since the filing of this Report NPI-Omnipoint Wireless LCC has *pro forma* assigned all of its PCS licenses to NOW Licenses.

⁵ See NOW Licenses LLC Amended Report, dated September 10, 2001.

request from any Public Safety Answering Point (“PSAP”). Accordingly, under Section 20.18(j) of the Commission’s Rules, NOW Licenses does not have any current obligation to deploy the necessary network components to provide Phase II E911 service by the October 1, 2001 deadline. Further, a waiver may not be necessary at all because no PSAP may make a request pursuant to Section 20.18(j) of the Commission’s Rules before the necessary software and hardware components are available from Nortel.

Nonetheless, out of an abundance of caution, NOW Licenses seek a limited waiver of the six month deployment schedule of Section 20.18(g)(2) to implement any necessary network software upgrades and network components for the NSS/E-OTD E911 solution.

Finally, for the same reasons as those articulated in the Voicestream waiver, NOW Licenses seeks a waiver of the accuracy requirements of Section 20.18(h). As the Commission itself recognized in the *Fourth MO&O*, the NSS/E-OTD solution does not initially provide the accuracy required under Section 20.18(h).⁶

NOW Licenses is not alone in filing for a waiver of the impending Commission deadlines. To date, other licensees who are operating, or plan to operate, GSM systems have determined that they cannot meet the current impending Commission deadlines for Phase II E911 compliance and have sought waivers similar to the one granted by the Commission to Voicestream in the *Fourth MO&O*.⁷ As is set forth in greater detail

⁶ *Fourth MO&O* at ¶ 63.

⁷ See, e.g., American Samoa License, Inc. Request for Waiver of the E-911 Phase II Rules, CC Docket 94-102, filed July 30, 2001; AT&T Wireless Services, Inc., Request
(continued...)

below, the Commission's underlying rationale for granting Voicestream the original two-step waiver applies with equal force to NOW Licenses and the Commission should grant the requested limited waiver expeditiously.

II. THE VOICESTREAM REQUIREMENTS CANNOT BE ACHIEVED THROUGH NO FAULT OF NOW LICENSES

In the *Fourth MO&O*, the Commission recognized that the development of automatic location information ("ALI") capabilities for use by GSM carriers has lagged behind that of carriers using other air interfaces, such as AMPS, CDMA, and TDMA.⁸ On this basis, the Commission granted a Voicestream a conditional waiver of the E911 rules to allow it to implement a hybrid location technology to achieve Phase II E911 compliance. In doing so, the Commission found that NSS/E-OTD "may be the only

(...continued)

for Waiver of the E911 Phase II Location Implementation Rules CC Docket 94-102, CC Docket 94-102, filed April 4, 2001; Cingular Wireless LLC Petition for Limited Waiver of Sections 20.18(e)-(h), CC Docket 94-102, filed July 6, 2001, *dismissed with respect to TDMA networks*, Letter to Magalie Salas from L. Andrew Tollin, dated July 24, 2001 ("Cingular Wireless Waiver"); Conestoga Wireless Company Petition for Waiver of E911 Phase II Location Technology Implementation Rules, filed August 9, 2001 ("Conestoga Waiver"); Cook Inlet/VS GSM IV PCS, LLC, et al., Petition for Waiver of the E911 Phase II Location Technology Implementation Rules, CC Docket 94-102, filed August 8, 2001; D&E/Omnipoint Wireless Joint Venture, L.P. (d/b/a PCS One) Petition for Waiver of the E-911 Phase II Location Technology Implementation Rules, CC Docket 94-102, filed June 20, 2001; Eliska Wireless Ventures License Subsidiary I, L.L.C. Petition for Waiver of the Commission's Rules, CC Docket 94-102, filed July 26, 2001; TeleCorp PCS, Inc. Request for Temporary Waiver of The Commission's Rules for E911 Phase II Enhanced Services, CC Docket 94-102, filed July 23, 2001; and Triton PCS License Company, L.L.C. Petition for Waiver of the E911 Phase II Location Technology Implementation Rules, CC Docket 94-102, dated August 3, 2001.

⁸ *Fourth MO&O* at ¶ 56.

method available to GSM carriers for compliance with Phase II for some time.”⁹ Further, the Commission recognized that there were “substantial additional public safety benefits” to the NSS/E-OTD system, including its projected rapid deployment, improved accuracy, and cost effectiveness.¹⁰

The first step of the hybrid solution approved by the Commission in the *Fourth MO&O* involves a network software solution (NSS) which uses the existing network capabilities to provide immediate location information for all 911 calls on the network. The second step requires the implementation of Enhanced Observed Time Difference of Arrival (E-OTD) technology, which requires a software upgrade to handsets and associated network upgrades to provide greater location identification accuracy. This two step solution requires both network and handset upgrades.

Recognizing that the two-step hybrid solution required both network and handset upgrades, the specific Phase II implementation schedule that the Commission approved for the Voicestream NSS/E-OTD solution is as follows:

- Implement an NSS that provides baseline location information with a location accuracy of 1000 meters, or better, for 67 percent of calls for all wireless 911 calls no later than December 31, 2001.
- By October 1, 2001, ensure that 50 percent of all new handsets activated on Voicestream’s network are E-OTD capable and that 100 percent of all new handsets activated on Voicestream’s network are E-OTD-capable by March 31, 2002.

⁹ *Fourth MO&O* at ¶ 56.

¹⁰ *Fourth MO&O* at ¶ 59.

- By October 1, 2001, ensure that all E-OTD-capable handsets comply with an ALI accuracy requirement of 100 meters/67 percent of the time and 300 meters/95 percent of the time.
- Ensure that all new E-OTD-capable handsets activated on or after October 1, 2003 comply with an accuracy requirement of 50 meters/67 percent of calls and 150 meters/95 percent of calls.
- Within 6 months after a PSAP request, or by October 1, 2001, whichever is later, Voicestream must implement any network or infrastructure upgrades necessary to provide Phase II service, and begin providing Phase II location information to such requesting PSAP.
- Report the results of all trials of its ALI technology and of actual operational deployment of its ALI technology and results semi-annually beginning October 1, 2000 and continuing through October 1, 2003.

The NSS/E-OTD solution serves the public interest. Based on testing done to date, it appears that the NSS/E-OTD solution will in fact produce the anticipated public safety benefits sought by the Commission in the *Fourth MO&O*. Recent tests indicate that NSS will meet or exceed its 1000 meter accuracy requirement.¹¹ Accordingly, NOW Licenses is committed to deploying the NSS/E-OTD hybrid solution over its network.

NOW Licenses, however, will not be able to deploy NSS/E-OTD in the same timeframes as originally fixed by the Commission. To determine when NOW Licenses could realistically expect to deploy E-OTD-capable handsets and perform the necessary upgrades to its network to perform NSS and E-OTD, NOW Licenses consulted with its handset vendors and its network infrastructure vendor.¹² NOW Licenses requested

¹¹ See Voicestream *Ex Parte* Presentation (Apr. 23, 2001).

¹² NOW Licenses understands that one of the reasons that E-OTD-capable handsets and NSS/E-OTD network infrastructure is not available is the need for standards so that
(continued...)

information from its usual handset vendors, Nokia, Mitsubishi, and Ericsson. In summary, none of these handset vendors will have commercially available E-OTD-capable handsets to deliver to NOW Licenses prior to October 1, 2001. It is NOW Licenses understanding that Nokia is still in the process of testing E-OTD prototype handsets, and that Nokia does not expect to have handsets available for commercial distribution in the near term.¹³ In addition, NOW Licenses has learned that Mitsubishi is forecasting that it will also not have handsets commercially available in the near term. Finally, NOW Licenses has been informed that Ericsson is developing E-OTD-capable handsets, but Ericsson has not been able to provide NOW Licenses with a timeline for delivery of such E-OTD-capable handsets in the near term.¹⁴

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handsets will be able to roam between GSM networks. It is NOW Licenses understanding that this lack of standards is becoming the pacing item for Phase II E911 implementation in both handsets and network infrastructure (software and hardware).

¹³ Nokia has told others that the company expects to have E-OTD capability for a limited portion of its product line by the first quarter of 2002. *Conestoga Waiver* at fn. 10.

¹⁴ Although it appears from the waiver filings made by other GSM carriers that one handset manufacturer – Samsung -- may have some limited availability of E-OTD-capable handsets on October 1, 2001, Samsung is not a regular supplier to NOW Licenses. Accordingly, it is unlikely that NOW Licenses would be able to purchase handsets from Samsung even if they are available. Further, NOW Licenses currently does not support the Samsung handset and it makes no sense for NOW Licenses to purchase Samsung handsets that will quickly be eliminated from NOW Licenses' network – especially since there have been no PSAP Phase II requests and the necessary network infrastructure to make the handsets operable will not be deployed for over 9 months at the earliest.

NOW Licenses also reviewed the waiver filings and E911 reports of other GSM carriers to determine what software upgrades and additional network elements are needed to implement NSS/E-OTD throughout its network. Based on its review, NOW Licenses understands that Nortel believes that GSM carriers will need to install GSM13 switch software and BSC v12.4+ upgrades in all of its base stations, as well as to deploy new network components including a Gateway Mobile Location Center (“GMLC”), a Serving Mobile Location Center (“SMLC”) and numerous Location Monitoring Units (“LMUs”) throughout its network to implement NSS/E-OTD. Based on the waiver filings of other carriers who plan to deploy NSS/E-OTD, it is apparent that not all of the necessary software and hardware components will be available from Nortel and tested in the field for accuracy and reliability before NOW Licenses would be required to deploy the network components of NSS/E-OTD pursuant to any PSAP request made pursuant to Section 20.18(j) which may be received by NOW Licenses through first quarter of 2002.¹⁵ Further, there is no assurance that the schedule will not slip further due to a number of factors, such as the availability of handsets for testing and resolution of technical issues identified through interoperability testing of E911 technology and other vendor’s technology contributions.¹⁶ Since NOW Licenses is a relatively small PCS licensee, it cannot drive Nortel to speed deployment and it is unlikely that Nortel will have the necessary gear for smaller licensees, such as NOW Licenses, prior to late second

¹⁵ See *Cingular Wireless Waiver* at p. 27, fn. 78; *Conestoga Waiver* at p. 4, fn. 9.

¹⁶ See Attachment A, to *Conestoga Waiver*.

(continued...)

quarter 2002. Further, since NOW Licenses does not yet have a Phase II PSAP request, NOW Licenses is not in a position to meaningfully demand speedier deployment.

Accordingly, even if both the handsets and network software and other components were available today, which they are not, they would still need to be installed and tested to ensure they provide the necessary accuracy and reliability. Based on the vendors' current deployment time schedules it appears that NOW Licenses will not have E-OTD-capable handsets by October 1, 2001 or be able to install and test all the necessary network software and additional network components if a PSAP requests Phase II E911 services through the second quarter of 2002. Accordingly, NOW Licenses respectfully requests that the Commission recognize that the original timetable set in the Voicestream waiver over a year ago cannot be met and accordingly grant NOW Licenses a limited waiver to deploy the NSS/E-OTD solution on a timetable that conforms with the realistic availability of the necessary technology in the marketplace.

III. REQUEST FOR WAIVER

A. Specific Rule Sections for which a Waiver is Requested

NOW Licenses seeks a limited waiver, to the extent one is necessary, of Sections 20.18(e), (g), and (h) of the Commission's Rules. Section 20.18(e) of the Commission's Rules provides that all cellular and broadband PCS licensees "must provide to the designated Public Safety Answering Point Phase II enhanced 911 service,

(...continued)

i.e., the location of all 911 calls by longitude and latitude in conformance with Phase II accuracy requirements.”¹⁷ As NOW Licenses has selected to use the hybrid ALI solution proposed by Voicestream, NOW Licenses must meet the deployment and location accuracy requirements of 20.18(g) and (h).

Section 20.18(g) provides that cellular and PCS licensees which opt for the handset based solutions must begin selling and activating “location-capable handsets no later than October 1, 2001” and meet a graduated schedule ending in 100 percent of new activations of location-capable handsets by December 31, 2002, and 95 percent penetration of location-capable handsets among all of its subscribers by December 31, 2005.¹⁸ As demonstrated above, since NOW Licenses will not have E-OTD-capable handsets by October 1, 2001, NOW Licenses respectfully requests a limited waiver of the initial requirement to have location-capable handsets by October 1, 2001 and the graduated scale of new activations of location-capable handsets. Based on its handset vendor’s current availability schedule, NOW Licenses specifically requests a waiver to deploy location-capable handsets in its network according to the following schedule:

- Begin deploying E-OTD-capable handsets as soon as Nokia and/or Mitsubishi have an E-OTD-capable handset available for commercial sale to NOW Licenses which has passed NOW Licenses handset tests.

¹⁷ 47 C.F.R. § 20.18(e).

¹⁸ 47 C.F.R. § 20.18(g)(1).

- By the later of June 30, 2002 or nine months following the delivery of the first E-OTD capable handset, ensure that 50 percent of all new handsets activated on NOW Licenses' network are E-OTD-capable.
- By or before March 31, 2003, ensure that 100 percent of all new handsets activated on NOW Licenses network are E-OTD-capable.

NOW Licenses does not request a waiver of the 95 percent penetration of location-capable handsets among its subscribers by December 31, 2005.

NOW Licenses also seeks a waiver, to the extent one is necessary, to delay deployment of any network components required to implement NSS/E-OTD under Section 20.18(g)(2). Section 20.18(g)(2) provides that

Once a PSAP request is received, the licensee shall, in the area served by the PSAP, within six months or by October 1, 2001, whichever is later: (i) install any hardware and/or software in the CMRS network and/or fixed infrastructure, as needed, to enable the provision of Phase II enhanced 911 service; and (ii) begin delivering Phase II enhanced service to the PSAP.¹⁹

As is demonstrated above, the necessary switch software and network components to implement NSS/E-OTD are not currently available and will not become generally available for carriers such as NOW Licenses until the second quarter of 2002 or later. Given that NOW Licenses will need several months to implement such software and hardware in its systems and test it, NOW Licenses requests a limited waiver, to the extent a waiver is necessary, to deploy the necessary NSS/E-OTD switch software and other

¹⁹ 47 C.F.R. § 20.18(g)(2).

network components in areas served by a requesting PSAP until the later of (a) six months from the date of a qualifying PSAP request, or (b) September 30, 2002.²⁰

Finally, Section 20.18(h)(2) of the Commission's Rules provides that handset based technologies shall meet an accuracy and reliability standard of 50 meters for 67 percent of the calls and 150 meters for 95 percent of the calls.²¹ The Commission has previously waived such accuracy requirements for Voicestream's implementation of NSS/E-OTD-capable handsets and a waiver is appropriate for NOW Licenses. However, as discussed above, Nortel will not have an NSS solution available until the second quarter of 2002. Accordingly, based on Nortel's availability schedule for the necessary software and hardware components, NOW Licenses seeks a waiver, to the extent necessary, to:

- Implement a network safety solution (NSS) that provides baseline location information with a location accuracy of 1000 meters, or better, for 67 percent of calls for all wireless 911 calls no later than September 30, 2002.
- Subject to accuracy standards of handsets made available from Nokia and Mitsubishi, by the later of (a) June 30, 2002 or (b) six months after initial commercial availability of the handsets, ensure that all E-OTD-capable handsets comply with an accuracy requirement of 100 meters for 67 percent of calls, 300 meters for 95 percent of calls.

²⁰ To the extent that Nortel is unable to provide the necessary software and hardware components for NSS/E-OTD implementation by NOW Licenses by the third quarter of 2002, NOW Licenses reserves the right to seek an extension of this date.

²¹ 47 C.F.R. § 20.18(h)(2).

- Ensure that all new E-OTD-capable handsets activated on or after October 1, 2003, comply with an accuracy requirement of 50 meters for 67 percent of calls, 150 meters for 95 percent of calls.

As is demonstrated in greater detail below, a grant of these limited waiver requests meets the Commission's waiver requirements and serves the public interest.

B. Applicable Waiver Standards

A waiver of the Commission's Rules is appropriate if the underlying purpose of the rule for which waiver is sought would not be served by strict enforcement and a grant of the requested waiver is in the public interest, or there are unique or unusual factual circumstances that render application of the rule unduly burdensome, inequitable, or contrary to the public interest, or if there is no reasonable alternative.²² With specific reference to Phase II E911 service deployment, the Commission has acknowledged that "there could be instances where technology-related issues or exceptional circumstances may mean that deployment of Phase II may not be possible by October 1, 2001," and indicated that "these cases could be dealt with through individual waivers as these implementation issues are more precisely identified."²³ Indeed, the Commission has granted at least one waiver of Section 20.18 based, in part, on the absence of a technical

²² 47 C.F.R. §§ 1.3, 1.925; *See also Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)(citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1029 (1972)).

²³ *Fourth MO&O* at ¶ 43.

solution for supplying Phase II location information²⁴ and a number of other waivers requests are pending.²⁵ Further, although not specifically stated in the Commission's Rules, the Commission has made clear that parties seeking a waiver of the Phase II E911 rules should demonstrate a "clear path to full compliance."²⁶

In the *Fourth MO&O*, the Commission established guidelines for waivers of its Phase II E911 service deployment rules. The Commission found that waiver requests were to be "specific, focused and limited in scope."²⁷ Further, the Commission stated that "carriers should undertake concrete steps necessary to come as close as possible to

²⁴ *Fourth MO&O* at ¶¶ 55-68.

²⁵ See, *supra*, footnote 7; See also, e.g., American Cellular Corporation, Petition for Waiver of Sections 20.18(e)(f), and (h) of the Commission's Rules, filed September 4, 2001; Chicago 20 MHz LLC, Petition for Limited Waiver of Section 20.18(e)-(h), CC Docket 94-102, filed August 9, 2001; Cincinnati Bell Wireless LLC, Petition for Waiver of the E911 Phase II Location Technology Implementation Rules, CC Docket 94-102, Filed May 1, 2001; Corr Wireless Communications, L.L.C., Petition for Waiver, CC Docket No. 94-102, filed June 22, 2001; Cincinnati Bell Wireless, LLC, Petition for Waiver of the Phase II Location Technology Implementation Rules, CC Docket No. 94-102, filed May 1, 2001; Carolina PCS I Limited Partnership, Petition for Waiver, CC Docket No. 94-102, filed Feb. 6, 2001 ("Carolina PCS Waiver"); Hawaiian Wireless, Inc., Petition for Waiver, CC Docket No. 94-102, filed Nov. 9, 2000; Leap Wireless International, Inc. Petition for Partial Waiver of E-911 Phase II Implementation Milestones, CC Docket 94-102, filed August 23, 2001; Nextel Communications, Inc. E911 Implementation Report and Waiver, CC Docket No. 94-102, filed Nov. 9, 2000; Pacific Wireless Technologies, Inc. Request for Temporary Waiver, CC Docket 94-102, filed August 8, 2001; and Western Wireless Corporation, Petition for Waiver of Section 20.18(g), filed August 31, 2001.

²⁶ *Fourth MO&O* at ¶ 44.

²⁷ *Id.*

full compliance (*e.g.*, selecting ALI technologies or vendors, timely placing orders for necessary equipment, performing other necessary preparatory work) and should document their efforts aimed at compliance in support of any waiver request.”²⁸ Finally, “[i]f deployment is scheduled but for some reason must be delayed, the carriers should specify the reason for the delay and provide a revised schedule.”²⁹ The Commission found that Voicestream’s waiver request met this standard and granted a conditional waiver of the E911 Phase II requirements consistent with its “ongoing obligation to monitor its regulatory programs and make adjustments in light of actual experience.”³⁰ In doing so, the Commission expressly recognized that few suitable compliance technologies exist for GSM carriers and that Voicestream’s NSS/E-OTD approach is probably the only solution that will be available to such carriers for “some time.”³¹

C. NOW Licenses Limited Waiver Request is Consistent with the Commission’s Rules and the Guidance Provided by the *Fourth MO&O*

The limited waiver request sought by NOW Licenses clearly meets the Commission standards for a waiver of the Commission’s Rules and the considerations articulated in the *Fourth MO&O*. NOW Licenses does not seek a “broad, generalized” waiver, but rather seeks a limited waiver which is “specific, focused and limited in

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Telocator Network of America v. FCC*, 691 F.2d 525, 550 n.191 (D.C. Cir. 1982).

³¹ *Fourth MO&O* at ¶ 56.

(continued...)

scope” and “outlines a clear path to full compliance.”³² The Commission has recognized special circumstances that warrant a waiver include “technology-related” issues.³³ This waiver request is driven not by a failure of NOW Licenses to act, but rather by “technology-related” issues stemming from delays and failures of its suppliers to develop and have commercially available the necessary software and equipment to allow NOW Licenses to comply with the Commission’s Rules by October 1, 2001. Since NOW Licenses is not a technology vendor, it cannot predict with any precision when solutions promised by third party equipment vendors will exist for NOW Licenses’ networks and handsets, but NOW Licenses believes that the necessary software and hardware will be available consistent with NOW Licenses’ waiver request.³⁴

In addition, NOW Licenses has undertaken its E911 obligations seriously. For example, NOW Licenses is in the process of implementing Phase I arrangements in all of its markets where it has received a Phase I request.³⁵ Moreover, NOW Licenses has

(...continued)

³² *Id.* at ¶ 44.

³³ *Id.* at ¶ 43.

³⁴ If NOW Licenses is wrong about when its vendors will in fact have the necessary handsets, software, and hardware available to implement NSS/E-OTD, NOW Licenses will seek an extension of this waiver to cover such additional time period.

³⁵ NOW Licenses has received at least 12 Phase I requests and NOW Licenses is in the process of working with those PSAPs to implement Phase I E911 services.

taken concrete steps to comply with the Commission's Phase II E911 rules, including the following: NOW Licenses has selected a Phase II technology and has filed the required Reports with the Commission on its deployment; NOW Licenses has had discussions with its handset vendors to determine when handsets with location-capability will be available for distribution by NOW Licenses; NOW Licenses has had discussions with Nortel, its switch vendor, to discuss what actions will be necessary for NOW Licenses to implement NSS/E-OTD; and NOW Licenses has determined what software and network equipment it will need to implement the NSS/E-OTD capability in its network, is devising an implementation plan to deploy at least the NSS technology by September 30, 2002, and will begin the process of ordering upgrades once it receives a PSAP Phase II request in accordance with Section 20.18(j) of the Commission's Rules. Further, Voicestream's semi-annual reports and ex parte presentations to the Commission have documented the progress being made toward the timely development and deployment of this technology.

In addition, NOW Licenses is proposing to deploy Phase II location technologies that satisfy the Commission's directive that "if no solution is available that fully complies, the carrier [is] expected to employ a solution that comes as close as possible, in terms of providing reasonably accurate location information as quickly as possible."³⁶ Although NOW Licenses is not currently required to deploy the network components required to implement NSS/E-OTD, NOW Licenses has contacted its switch vendors to

³⁶ *Fourth MO&O* at ¶ 45.

(continued...)

ensure that when a request is made NOW Licenses will be in a position to deploy NSS/E-OTD within the time schedule proposed by NOW Licenses in this limited waiver request. Finally, NOW Licenses' limited waiver request also provides a revised schedule that will ensure compliance as soon as the equipment and handsets are available. Accordingly, NOW Licenses has met the Commission's requirements for a limited waiver and the Commission should expeditiously grant such a waiver.

IV. A GRANT OF NOW LICENSES REQUESTED LIMITED WAIVER WOULD SERVE THE PUBLIC INTEREST

The public interest will be served by a grant of NOW Licenses' limited waiver request of the Commission's Phase II E911 rules. The primary consideration in weighing the public interest in waivers of the Phase II E911 rules is the Commission's Section 1 mandate of "promoting safety of life and property through the use of wire and radio communication"³⁷ As the Commission found in the *Fourth MO&O*, a waiver is "appropriate" here because of the "significant public safety benefits" associated with the NSS/E-OTD solution.³⁸

NOW Licenses' use of NSS/E-OTD location technology will produce the same benefits as those cited by the Commission as the basis for Voicestream's waiver. Like Voicestream, NOW Licenses will deploy the NSS capability within the third quarter of

(...continued)

³⁷ 47 U.S.C. § 151.

³⁸ See *Fourth MO&O* ¶ 57.

(continued...)

2002 and, once implemented, NOW Licenses thereby be capable of delivering improved accuracy and reliability over Phase I location information. Further, use of the combined NSS/E-OTD technology will provide rapid initial ALI location capability and swift transition between increasing levels of accuracy according to the deployment schedule described above.

In contrast, without use of the NSS/E-OTD ALI solution, it is unlikely that NOW Licenses will be able to meet the Commission's E911 Phase II requirements as quickly. NOW Licenses understands its responsibility to "employ a solution that comes as close as possible" to full compliance if its preferred location solution is not available.³⁹ At this time, however, NOW Licenses, a small regional carrier, does not have the necessary clout with equipment manufacturers to encourage the timely development of a successful, alternative GSM location technology. Moreover, such efforts would be unnecessarily duplicative as the NSS/E-OTD location technology is already both "available and feasible."⁴⁰ Indeed, such efforts would unnecessarily raise concerns about interoperability between NOW Licenses' Phase II solutions and those of other GSM carriers, to the detriment of consumers.

(...continued)

³⁹ See *Id.* ¶ 45.

⁴⁰ See *Id.*

Since the grant of its waiver in September 2000, NOW Licenses, based on filings made by Voicestream with the Commission, understands that Voicestream has made substantial strides in testing and product development; thus, the NSS/E-OTD technology should expeditiously deliver the anticipated public safety benefits. Granting a waiver to NOW Licenses to deploy the NSS/E-OTD technology will enable GSM carriers, such as NOW Licenses, to seamlessly hand off emergency calls between their networks in the very near future. Thus, the public safety benefits associated with the NSS/E-OTD ALI technology will be distributed more widely and quickly to NOW Licenses' wireless customers than would be possible with any other location solution.

In addition, NOW Licenses understands that the other network based solutions to provide ALI information are not available to meet the Commission's timeframes and may not meet the Commission's accuracy requirements. For example, in its waiver request, Cingular Wireless documents the extensive due diligence that it has undertaken with respect to other network solutions and its conclusion was that "they were all sufficiently lacking that none completely satisfied the FCC's accuracy requirements."⁴¹ NOW Licenses further notes that Cingular Wireless, along with other GSM carriers, has concluded that "no vendor can provide A-GPS or TOA [time of arrival] technology for ...

⁴¹ *Cingular Wireless Waiver* at p. 12.

GSM networks in sufficient time to meet the Commission's E911 Phase II requirements.”⁴²

Further, since virtually every other GSM carrier is deploying NSS/E-OTD, such standard is developing into a *de facto* standard for GSM networks. The interoperability of NOW Licenses’ and other GSM networks will help ensure the availability of Phase II service to customers roaming into NOW Licenses’ service areas.⁴³ If NOW Licenses does not deploy NSS/E-OTD roaming customers would not be provided with Phase II E911 ALI services. Accordingly, the only technology that NOW Licenses can deploy in the near future which will meet the Commission’s desire to have Phase II E911 location-capability deployed as ubiquitously as possible is the NSS/E-OTD technology.

Finally, there have been no qualifying Phase II requests from PSAPs in NOW Licenses’ licensed areas so the delay in implementation proposed by NOW Licenses will not have any impact on existing emergency services or existing Phase II PSAP requests. Currently, NOW Licenses is in the process of implementing Phase I E911 services to 12 PSAPs and, pursuant to Section 20.18(d) of the Commission’s Rules, NOW Licenses

⁴² See *Cingular Wireless Waiver* at pp. 18-19; See also *AT&T Wireless Waiver* at 5-6 & n. 17; and *Voicestream Ex Parte* Presentation, CC Docket No. 94-102, at 2 (Feb. 5, 2001).

⁴³ See *Third Report and Order*, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, FCC 99-245, ¶¶ 55-61 (rel. Oct. 6, 1999)(requiring the interoperability of handset-based solutions and a “best practice” approach for providing ALI to roamers who do not have ALI-capable handsets).

will provide Phase II E911 services in accordance with the waiver sought herein to PSAPs who make qualifying requests pursuant to Section 20.18(j) of the Commission's Rules. As the Commission itself has recognized, deployment of E911 services requires the cooperation of CMRS carriers and PSAPs and Phase II E911 location services are only useable by those PSAPs which have deployed the necessary upgrades to their systems.⁴⁴ Since no PSAP in NOW Licenses' markets is currently able to use Phase II E911 services, the minimal delay sought by NOW Licenses will not delay Phase II E911 services.

⁴⁴ *Second Memorandum Opinion and Order*, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, FCC 99-352 (rel. December 8, 1999) at ¶ 66.

V. CONCLUSION

For the foregoing reasons, NOW Licenses submits that the requested temporary and limited waiver will serve the public interest, convenience and necessity, and respectfully asks that the Commission grant this petition as soon as possible, but in any event before October 1, 2001.

Respectfully submitted,

NOW LICENSES, LLC

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September 10, 2001

Exhibit A

MARKET	BLOCK	CALL SIGN
Saginaw-Bay City	E(4)	WPOM284
Saginaw-Bay City	E(6)	WPQP554
Grand Rapids	E(2)	WPOM283
Grand Rapids	E(4)	WPQP556
Mt. Pleasant	E	KNLH301
Muskegon	E	KNLH302
Petoskey	D	KNLG268
Petoskey	C	KNLF707
Traverse City	C	KNLF708